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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DEBRA BROWN, SANDRA MORTON,  
and BARBARA LABUSZEWSKI,  
individually and on behalf of all other  
similarly situated individuals,

Plaintiffs,

v.

THE PERMANENTE MEDICAL GROUP,  
INC., a California corporation,

Defendant.

No. 3:16-CV-05272-VC

**CLASS ACTION**

**~~PROPOSED~~ ORDER GRANTING MOTION  
FOR ATTORNEYS' FEES,  
LITIGATION/SETTLEMENT  
ADMINISTRATION EXPENSES, AND CLASS  
REPRESENTATIVE SERVICE AWARDS AS  
MODIFIED**

Date: October 5, 2017

Time: 10:00 a.m.

Courtroom: 4

450 Golden Gate Avenue, 17th Floor  
San Francisco, California 94102

Judge: Hon. Vince Chhabria

1 On October 5, 2017, a hearing was held on the joint motion of plaintiffs Debra Brown, Sandra  
2 Morton and Barbara Labuszewski and defendant The Permanente Medical Group, Inc. (“TPMG”), and  
3 on the separate motion of Plaintiffs’ and Class Counsel for Attorneys’ Fees, Litigation Expenses,  
4 Settlement Administration Expenses, and Class Representative Service Awards. Kevin J. Stoops and  
5 Jason L. Thompson of Sommers Schwartz, P.C., and Jahan C. Sagafi of Outten & Golden LLP appeared  
6 for plaintiffs; and Jeffrey D. Wohl and Caitlin M. Wang of Paul Hastings LLP appeared for TPMG.

7 The parties have submitted their Settlement, which this Court preliminarily approved by its order  
8 entered on June 9, 2017. In accordance with the Preliminary Approval Order, Class Members have been  
9 given notice of the terms of the Settlement and the opportunity to object to it or to exclude themselves  
10 from its provisions.

11 Having received and considered the motion of Plaintiffs’ and Class Counsel for Attorneys’ Fees,  
12 Litigation Expenses, Settlement Administration Expenses, and Class Representative Service Awards; the  
13 Memorandum and corresponding declarations and documents filed in support of that motion; Plaintiffs’  
14 and Class Counsel’s Reply Brief in support of their motion for Attorneys’ Fees, Litigation Expenses,  
15 Settlement Administration Expenses, and Class Representative Service Awards; the Memorandum and  
16 corresponding declarations and documents filed in support of that reply; and based on the entire record  
17 of this action; the Court HEREBY ORDERS and MAKES DETERMINATIONS as follows:

18 1. The Court has jurisdiction over the subject matter of this action, the Defendant, and the  
19 Class.

20 2. Notice of the requested award of attorneys’ fees, reimbursement of litigation expenses,  
21 reimbursement of settlement administration expenses, and awards of class representative service  
22 payments was directed to Class Members in a reasonable manner, and complies with Rule 23(h)(1) of  
23 the Federal Rules of Civil Procedure.

24 3. Class Members and any party from whom payment is sought have been given the  
25 opportunity to object in compliance with Fed. R. Civ. P. 23(h)(2).

26 **Appointment of Class Representatives and Approval of Class Representative**  
27 **Awards**

1           4.       The Court confirms as final the appointment of Debra Brown, Sandra Morton and  
2 Barbara Labuszewski as Class Representatives of the FLSA Collective and the California Rule 23 Class.

3           5.       The requested Class Representative service awards of \$10,000 each for Class  
4 Representatives Brown, Morton and Labuszewski, are fair and reasonable in light of the time and effort  
5 the Class Representatives expended for the benefit of the Class Members, as well as the risk accepted by  
6 initiating the litigation and publicly representing the Class. *See, e.g., Stevens v. Safeway, Inc.*, No. 05  
7 Civ. 01988, 2008 U.S. Dist. LEXIS 17119, at \*34-37 (C.D. Cal. Feb. 25, 2008) (\$20,000 and \$10,000 to  
8 two class representatives); *Glass v. UBS Financial Services, Inc.*, 7 Case No. 06 Civ. 4068, 2007 WL  
9 221862, at \*16-17 (N.D. Cal. Jan. 26, 2007) (\$25,000 each to four class representatives); *Van Vranken v.*  
10 *Atl. Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (\$50,000 to one class representative); *In Re*  
11 *Janney Montgomery Scott LLC Financial Consultant Litig.*, No. 06 Civ. 3202, 2009 U.S. Dist. LEXIS  
12 60790, at \*35-37 (E.D. Pa. July 16, 2009) (\$20,000 each to three class representatives); *Wade v. Kroger*  
13 *Co.*, No. 01 Civ. 699, 2008 WL 4999171, at \*13 (W.D. Ky. Nov. 20, 2008) (\$30,000 each to multiple  
14 class representatives); *Wright v. Stern*, 553 F. Supp. 2d 337, 342 (S.D.N.Y. 2008) (\$50,000 each to  
15 eleven class representatives ); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366,  
16 374 (S.D. Ohio 1990) (\$35,000-55,000 each to five class representatives). The Class Representatives  
17 have satisfied the criteria as set forth in *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003). Under  
18 *Staton*, a service award request should be evaluated using ““relevant factors, includ[ing] the actions the  
19 Plaintiff has taken to protect the interests of the class, the degree to which the class has benefited from  
20 those actions, ... the amount of time and effort the Plaintiff expended in pursuing the litigation ... and  
21 reasonabl[e] fear[s] of workplace retaliation.”” *Staton*, 327 F.3d at 977 (citing *Cook v. Niedert*, 142 F.3d  
22 1004, 1016 (7th Cir. 1998)) (ellipses in original). Here, the Class Representatives’ leadership of this  
23 action caused them personal exposure and potential adverse consequences with future employers, and  
24 their representation of the FLSA and state law Classes enhanced the case’s value overall by increasing  
25 TPMG’s potential exposure, tolling the statutes of limitations for those claims. Furthermore, Class  
26 Counsel attests that the Class Representatives were substantially involved throughout the litigation,  
27 educating Class Counsel regarding Class Members’ job experiences and TPMG’s policies and  
28

1 procedures. Accordingly, the Court approves payment of Class Representative service awards in the  
2 amount of \$10,000 each to Debra Brown, Sandra Morton and Barbara Labuszewski.

3 **Appointment of Class Counsel; Approval of Class Counsel's Attorneys' Fees and**  
4 **Litigation Expenses**

5 6. The Court confirms as final the appointment of the following law firms and attorneys as  
6 class counsel ("Class Counsel") for the Rule 23 and FLSA Classes: Kevin Stoops and Jason Thompson  
7 of Sommers Schwartz, P.C., Jahan C. Sagafi of Outten & Golden LLP.

8 7. The Court finds and determines that Class Counsel's requested award of \$1,876,500 in  
9 attorneys' fees, or 30% of the common funds, is reasonable under the percentage of the common fund  
10 method, as it is consistent with Ninth Circuit authority. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d  
11 1043 (9th Cir. 2002) (affirming award of 28% of \$96.885 million common fund, while recognizing that  
12 the percentage of an award generally increases as the common fund decreases); *In re Pacific Enterprises*  
13 *Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming award of 33% of \$12 million common fund); *In*  
14 *re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 460 (9th Cir. 2000) (affirming award of 33.3% of \$1.725  
15 million fund); *see also In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989) (surveying  
16 cases and stating, "in class action common fund cases the better practice is to set a percentage fee and  
17 that, absent extraordinary circumstances that suggest reasons to lower or increase the percentage, the rate  
18 should be set at 30%."). The Court reaches this conclusion based on attorneys' fees awards issued in  
19 similar wage and hour cases in this District, and the fact that the common fund of \$6,255,000 was  
20 created for Class Members through the efforts of Class Counsel. *See Boyd v. Bank of Am. Corp.*, No. 13  
21 Civ. 0561, 2014 WL 6473804, at \*9 (C.D. Cal. Nov. 18, 2014) (approving fee award of 36% of common  
22 fund settlement); *In re Quantum Health Res., Inc.*, 962 F. Supp. 1254, 1258 (C.D. Cal. 1997) (attorneys  
23 representing a class "routinely recover attorneys' fees in the range of 20 to 40 percent of the common  
24 fund"); *see also Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010) (33.3% fee  
25 award; \$300,000 common fund) (collecting cases).

26 8. The requested fee award is also reasonable under the lodestar method. The hours devoted  
27 to this case by Class Counsel and their rates are reasonable. The award results in a multiplier of  
28 approximately 3.0, which falls within the range of fee multipliers courts routinely approve, and is

1 reasonable in light of the time and labor required, the difficulty of the issues involved, the requisite legal  
2 skill and experience necessary, the results obtained for the Class, the contingent nature of the fee and  
3 risk of no payment, and the range of fees that are customary. Courts routinely approve similar or higher  
4 lodestar multipliers in comparable common fund cases. *See Vizcaino*, 290 F.3d at 1052-54; *Steiner v.*  
5 *Am. Broad. Co.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) (affirming award with multiplier of 6.85); *see*  
6 *also* Newberg, *Attorney Fee Awards*, § 14.03 at 14-5 (1987) (“multiples ranging from one to four are  
7 frequently awarded in common fund cases when the lodestar method is applied.”); *Rabin v. Concord*  
8 *Assets Group, Inc.*, No. No. 89 Civ. 6130 (LBS), 1991 WL 275757 (S.D.N.Y. 1991) (4.4 multiplier) (“In  
9 recent years multipliers of between 3 and 4.5 have become common.”) (internal quotations and citations  
10 omitted); *In re Xcel Energy, Inc., Securities, Derivative & “ERISA” Litig.*, 364 F. Supp. 2d 980, 998-99  
11 (D. Minn. 2005) (approving 25% fee, resulting in 4.7 multiplier); *In re Aremissoft Corp. Sec. Litig.*, 210  
12 F.R.D. 109, 134-35 (D.N.J. 2002) (approving 28% fee, resulting in 4.3 multiplier); *Maley v. Del Global*  
13 *Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (approving 33.3% fee, resulting in “modest  
14 multiplier of 4.65”); *Di Giacomo v. Plains All Am. Pipeline*, Nos. 99-4137 & 99-4212, 2001 WL  
15 34633373, at \*10-11 (S.D. Fla. Dec. 19, 2001) (approving 30% fee, resulting in 5.3 multiplier); *Roberts*  
16 *v. Texaco, Inc.*, 979 F. Supp. 185, 198 (S.D.N.Y. 1997) (5.5 multiplier); *Roberts v. Texaco*, 979 F. Supp.  
17 185 (S.D.N.Y. 1997) (5.5 multiplier); *Weiss v. Mercedes-Benz of N. Am., Inc.*, 899 F. Supp. 1297, 1304  
18 (D.N.J. 1995) (9.3 multiplier), *aff’d*, 66 F.3d 314 (3d Cir. 1995).

19 9. For these reasons, the Court awards Class Counsel attorneys’ fees in the amount of  
20 \$1,876,500.

21 10. The Court finds and determines, pursuant to the terms of the Settlement, that within 7  
22 days of receipt of the Total Settlement Amount from TPMG (which must be paid within 14 days of the  
23 Settlement becoming Final) the Settlement Administrator will wire transfer the attorneys’ fee award of  
24 \$1,876,500 to Sommers Schwartz, P.C., and Sommers Schwartz, P.C., will be responsible for  
25 distribution of fees to Class Counsel including Outten & Golden LLP.

26 11. The Court finds and determines that Class Counsel’s request for reimbursement of  
27 litigation expenses in the amount of \$52,715.52 is reasonable and is consistent with Ninth Circuit  
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1 authority. The litigation expenses incurred by Class Counsel have been adequately documented and  
2 were reasonably incurred for the benefit of the Class. The Court finds that these litigation expenses are  
3 justified.

4 12. The Court finds and determines, pursuant to the terms of the Settlement, that within 7  
5 days of receipt of the Total Settlement Amount from TPMG (which must be paid within 14 days of the  
6 Settlement becoming Final) the Settlement Administrator will wire transfer the fees expenses to  
7 Sommers Schwartz, P.C., and Sommers Schwartz, P.C., will be responsible for distribution of litigation  
8 expenses to Class Counsel including Outten & Golden LLP.

9 **Settlement Administration Expenses**

10 13. Settlement Administrator, Simpluris, Inc., has filed a declaration identifying the work it  
11 has performed and will perform in this matter and identifying its total invoice amount of \$26,600.

12 14. The Court finds that these settlement administration expenses are fair and reasonable and  
13 appropriate in this case and awards reimbursement of that amount to Simpluris, Inc., from the Total  
14 Settlement Amount.

15 IT IS SO ORDERED.

16 Dated: October 11, 2017.



17  
18 Vince Chhabria  
United States District Judge